

EXHIBIT 18

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION :
CORPORATION, Adv. Pro. No.
: 08-01789 (SMB)
Plaintiff, :
SIPA LIQUIDATION
v. :
(Substantively
BERNARD L. MADOFF INVESTMENT Consolidated)
SECURITIES, LLC, :
Defendant. :

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In Re: :
BERNARD L. MADOFF, :
Debtor. :

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IRVING H. PICARD, Trustee :
for the Liquidation of Adv. Pro. No.
Bernard L. Madoff Investment : 10-04503 (SMB)
Securities, LLC, :
Plaintiff, :
v. :
JUDD ROBBINS, :
Defendant. :

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TRANSCRIPT of telephone conference
as reported by NANCY C. BENDISH, Certified Court
Reporter, RMR, CRR and Notary Public of the
States of New York and New Jersey, on Thursday,
February 9, 2017, commencing at 11:00 a.m.

1 B E F O R E:

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1 MS. CHAITMAN: Helen Davis
2 Chaitman and Greg Dexter, for the defendant.

3 THE REPORTER: And for Baker, Mr.
4 Jacobs?

5 MR. JACOBS: Yes, and also Brian
6 Song and Dean Hunt who has yet to join, but
7 we're expecting him.

8 (Dean Hunt joins.)

9 JUDGE MAAS: So now we have, I
10 take it, a full house.

11 MR. HUNT: Dean Hunt just joined,
12 Your Honor.

13 JUDGE MAAS: Is there anybody else
14 from Baker Hostetler who we're expecting, or is
15 that it?

16 MR. HUNT: Brian Song, my partner
17 Brian Song was going to be on, and I believe he
18 is on and so is Mr. Jacobs. That's it.

19 JUDGE MAAS: The reason I asked
20 for this conference call is in part I understand
21 that Judge Bernstein held a conference or
22 intended to hold a conference earlier in the
23 week regarding Ms. Chaitman's appeal of some of
24 my orders. Did that occur and, if so, could
25 somebody just briefly tell me what happened.

1 MS. CHAITMAN: Yes, this is Helen.

2 I can tell you.

3 The judge did not construe the
4 order the way Baker has construed it, as
5 evidenced by their recent demand of Mr. Robbins
6 that he answer questions about subsequent
7 transferees.

8 What the judge said was that the
9 only subsequent transferee information that has
10 to be disclosed is if it's invoked by an
11 affirmative defense that he's asserted, and the
12 only affirmative defense he's asserted that
13 indicates subsequent transfers is the defense
14 with respect to payment of taxes. And all of
15 that documentation is being produced in
16 accordance with your prior order, Judge.

17 MR. HUNT: Your Honor, this is
18 Dean Hunt. Ms. Chaitman is wrong about what
19 occurred at the hearing.

20 The hearing was for the purpose of
21 appeal, whether or not she could appeal your
22 order. She claimed that paragraph 3 was a
23 punishment if you didn't consent to the
24 stipulation in paragraph 2.

25 We explained at the hearing that

1 that's not exactly how it works at all. It's
2 really a gift, that paragraph 3 lets you avoid
3 some discovery topics if you're able to
4 stipulate to the transfers, and that if you're
5 not able to stipulate to the transfers,
6 paragraph 4 applies and we come back to you if
7 we can't agree.

8 Judge Bernstein recognized that
9 that in fact is the case. Everything that Ms.
10 Chaitman advised you just now was discussion
11 that was irrelevant to the issue at hand, and
12 Judge Bernstein ruled that there was nothing to
13 appeal, and that if we couldn't agree on things,
14 we should come back and talk to you.

15 JUDGE MAAS: The reason I asked is
16 I think I have a position which would be
17 somewhere between the two of you. When we met
18 on December 13 I didn't specifically rule on the
19 objection to requests that would yield
20 subsequent transferee information, because I
21 mistakenly thought that most of the problem
22 would go away by virtue of the stipulation,
23 which clearly is not the case. And I did say,
24 not verbatim but in substance, that if there was
25 a request that had a proper purpose but that

1 would also yield subsequent transferee
2 information, that request was not objectionable
3 just because some subsequent transferee
4 information would come along for the ride with
5 the rest of the request.

6 When we had our conference on
7 January 5th, and that's why I asked for the
8 transcript, I had the recollection, and the
9 transcript confirmed it, that I had asked if
10 there was anything else anybody wished to take
11 up and nothing was raised at that time.

12 So, my position again, as I said,
13 is if a discovery request seeks information that
14 relates to some material contested fact in an
15 adversary proceeding or an affirmative defense,
16 the fact that it yields some subsequent
17 transferee information is not a basis to deny
18 the request.

19 On the other hand, if there is a
20 request that seeks information that's no longer
21 relevant for one of those two purposes, and that
22 essentially just seeks nakedly subsequent
23 transferee information, I certainly would
24 entertain an application from you, Ms. Chaitman,
25 to have me rule with respect to that request.

1 That's why I requested the conference when the
2 Robbins issue came up. Frankly, I was using
3 that as a vehicle to make my position clearer
4 what I intended on December 13th.

5 MR. HUNT: Just to respond to
6 that, Your Honor, I think we agree with that.
7 You know, the issues before Judge Bernstein
8 yesterday had nothing to do with subsequent
9 transfers, and Brian Song can address the
10 specifics of the Robbins case, that neither does
11 the Robbins case, for the issues that he raised
12 in his letter.

13 JUDGE MAAS: Let me just give my
14 spin on Robbins. Ms. Chaitman says it's not
15 within the scope of what I referred on consent
16 and I'm loathe to get into Robbins until Judge
17 Bernstein has an opportunity to rule on whether
18 he views it as within the scope of what's been
19 referred to me on consent. I'll certainly hear
20 from you, Mr. Song, but that's my initial
21 reaction.

22 MR. SONG: Thank you, Your Honor.
23 To discuss that first part, as to whether or not
24 this matter is properly before you, Ms. Chaitman
25 has proceeded to try to have it both ways,

1 whereas we provided the deposition exhibits in
2 advance to her in accordance with your ruling.
3 We abided by the four-hour limit for the
4 deposition. She provided tax documents to us
5 and specifically referenced that they were in
6 accordance with your order. And only now when
7 we file an application to enforce the other
8 parts of the order that are not favorable to
9 her, that we get the position that, oh, well,
10 this matter is not properly before you.

11 You know, we are now in the
12 untenable position of not being able to tell
13 which cases where Ms. Chaitman has previously
14 said, before Your Honor, that she wants your
15 rulings to apply to all of her cases. And now
16 she's selectively deciding which ones should be
17 applied and which ones shouldn't be and when
18 they should be and when they shouldn't be. That
19 is the first point.

20 The second point, Your Honor, is
21 the way you described what this dispute is
22 about, that middle ground is precisely what
23 we're seeking. We are not seeking information
24 specifically targeted towards subsequent
25 transfers. And if you will look at the

1 interrogatories that we sent, there are --
2 sorry, the discovery requests that we sent,
3 there are some that are specifically targeted to
4 subsequent transfer information. Ms. Chaitman
5 declined to respond to those and we're not
6 pursuing them.

7 The ones that we are pursuing are
8 precisely within the bounds of your prior order.
9 We'd like to know about the initial transfers.
10 We would like to know about the factual basis
11 for her affirmative defenses. And now that
12 we've gone through an entire deposition with her
13 client, who's unable to tell us what the factual
14 bases are for those affirmative defenses, Ms.
15 Chaitman has an obligation under Rule 26 to
16 supplement her responses. That's what we had
17 laid out before her.

18 JUDGE MAAS: Ms. Chaitman?

19 MS. CHAITMAN: Your Honor, there
20 are specific cases where my clients, after
21 consultation with me, agreed to submit the
22 issues to you and those cases are the ones in
23 which the -- if Baker is unaware of which ones
24 they are, they should just look at the orders
25 that were filed, because you filed orders in

1 each of the cases where the caption was -- the
2 defendants had submitted the issue to you.

3 We did not -- I have no authority
4 on behalf of other clients to submit the issues
5 to you unless and until the clients agree to do
6 that. And if there's some misunderstanding that
7 by submitting one case to you where you say that
8 you'd like this ruling to apply to all cases, if
9 that was intended to require all of my clients
10 to submit to you, then I apologize for not
11 comprehending that. But I have not spoken to
12 all of my clients and had all of them agree to
13 this.

14 It's different with respect to our
15 motion to compel the Trustee to produce
16 documents because you may recall that we had
17 been before Judge Bernstein and we had served
18 interrogatories in all of the cases, and we
19 discussed with Judge Bernstein what would be the
20 most efficient way for our issues with respect
21 to the Trustee's refusal to respond to his
22 discovery demand, how that would be handled.
23 And he said, well, let's do it through Wilenitz,
24 but it will apply to everybody.

25 But that was a specific ruling

1 that the judge made and I didn't have a problem
2 with that. But I'm really not in a position,
3 without getting the consent of each specific
4 client, to submit issues to you.

5 Particularly with respect to
6 Robbins, these are issues that we have been over
7 and over with Judge Bernstein and Judge
8 Bernstein made it very clear yesterday, and
9 fortunately we have a transcript so we don't
10 have to argue about what was said and what was
11 not said, but Judge Bernstein made it very clear
12 that unless the client consents to submit an
13 issue to you, it has to be raised before him.

14 JUDGE MAAS: And I don't have a
15 problem with that. I guess some of this may
16 fall into the category of be careful what you
17 wish for in the sense that if rulings don't
18 apply generally, I suppose the Trustee may then
19 be filing motions to compel in lots of adversary
20 proceedings with you having to respond
21 individually to each of those, circumstance that
22 I had understood that you, understandably, were
23 trying to avoid.

24 But turning to Robbins
25 specifically where Mr. Song spoke both to the

1 merits and to the procedural posture, as far as
2 I'm concerned I think Judge Bernstein ought to
3 rule in the first instance on whether he views
4 that as within the scope of the referral, and
5 maybe he has ruled, but seems to me it's for him
6 in the first instance to decide whether it's
7 within the scope of a prior referral, not
8 Wilenitz but I guess it's Train Klan and the
9 others, and deal with it or not deal with it
10 accordingly.

11 I guess on Robbins for the moment,
12 the only thing I'd ask is that when a transcript
13 of the conference before Judge Bernstein is
14 available, that the Trustee forward a copy to
15 me. To the extent that the two sides can't
16 agree on what the scope of my authority is,
17 that's something the Trustee will have to raise
18 in the first instance before Judge Bernstein.

19 MR. JACOBS: Hi Judge, this is Ted
20 Jacobs. I just wanted to let you know I just
21 now sent you by email a copy of that transcript
22 that you requested.

23 Unfortunately this situation --
24 we're happy to appeal these issues to Judge
25 Bernstein as you stated. Unfortunately we're in

1 the position where, again, Ms. Chaitman has
2 successfully used the process to multiply
3 needless litigation now over your jurisdiction
4 which, you know, in various hearings she
5 specifically represented on the record applied
6 to all of her cases. But I understand your
7 hesitance to move forward without Judge
8 Bernstein weighing in on this issue, so we're
9 happy to take it to him.

10 But I think that while that's
11 pending, we're going to need some clarity as to
12 whether you view the orders that you've issued
13 so far to apply in any particular cases beyond
14 the specific cases that were captioned. And if
15 the answer is no, then we're happy to make a
16 quick application to Judge Bernstein requesting
17 that your order that he apply, that he order
18 your order applicable in all of Ms. Chaitman's
19 cases.

20 Alternatively, if Ms. Chaitman is
21 prepared to let us know within a reasonable
22 amount of time, and by that I mean days and not
23 weeks or months, whether her clients consent to
24 your jurisdiction in all of her cases, then we
25 would -- we could potentially avoid that

1 needless application to Judge Bernstein, which
2 will just require probably more letters and more
3 briefing and more hearings, which will be a cost
4 to everyone involved.

5 JUDGE MAAS: The answer to your
6 question is yes and no, in the sense that, yes,
7 I think my rulings should be applied to the
8 extent that the facts and procedural posture are
9 analogous. No in the sense that I don't think I
10 can make a ruling that they necessarily apply,
11 and such that I can enforce them. So I do think
12 you will need to make the application to Judge
13 Bernstein.

14 As a practical matter, I suppose I
15 could make rulings in Robbins, but Ms. Chaitman
16 is going to end up appealing that, saying
17 there's no jurisdiction. So the issue might as
18 well be keyed up for Judge Bernstein in the
19 first instance.

20 MR. JACOBS: Okay.

21 JUDGE MAAS: As to the other point
22 you made, asking Ms. Chaitman to let you know
23 sooner rather than later which cases, if any, my
24 rulings will apply to, what's your position on
25 that, Ms. Chaitman?

1 MS. CHAITMAN: I can certainly let
2 them know that, but I think one of the problems,
3 Judge, is that the cases are in different
4 procedural postures and Mr. Robbins' case is in
5 a situation where the Trustee has already
6 deposed him, we have fully responded to initial
7 interrogatories, supplemental interrogatories,
8 initial document demands, supplemental document
9 demands and, you know, I think that the cases
10 that I had put before you were cases where no
11 deposition had yet occurred.

12 MR. Hunt: Can I just interrupt on
13 that, Helen. He said he's not going to rule on
14 it, so I don't think it's worth our time to have
15 you reargue those points.

16 MS. CHAITMAN: I was simply
17 responding to the Judge's question.

18 JUDGE MAAS: I think Ms. Chaitman
19 was trying to tell me which category of cases
20 she might consent on and why Robbins was not one
21 of those cases.

22 MR. HUNT: Yes, I thought that was
23 the question.

24 JUDGE MAAS: Go on, Ms. Chaitman.

25 MS. CHAITMAN: The point, I pretty

1 much made the point, that some of the cases are
2 in different stages and the facts are different
3 and so that's why I think the cases that were
4 submitted to you were all within one category.
5 They were clients whose depositions had not yet
6 been taken where for certain reasons we had
7 asked that the deposition not go forward because
8 the clients were elderly and not well. And
9 you've ordered those depositions to go forward
10 unless we're able to stipulate to the accuracy
11 of the first five columns of Exhibit B.

12 My other clients are not in that
13 position and I have not reviewed the issues with
14 them and I have no authority to submit their
15 issues to you at this point. But I will
16 certainly let Baker know.

17 JUDGE MAAS: Why don't I say
18 within one week.

19 MS. CHAITMAN: Sure.

20 MR. JACOBS: And if at that time
21 for any cases which, Helen, you haven't agreed
22 to Judge Maas' authority or otherwise or are
23 still disputing any of the issues, we're going
24 to have no choice but to send an application for
25 Judge Bernstein to have Judge Maas' orders apply

1 in all of your cases.

2 JUDGE MAAS: I think that's
3 understood that we're keying that issue up.

4 MR. JACOBS: Okay.

5 JUDGE MAAS: Anything else we are
6 to take up today?

7 MS. CHAITMAN: Judge, we have an
8 issue. We've expressed concern with the
9 Trustee's compliance with our discovery demands
10 based upon your order, and we had sent an email
11 to you. There was no response from Baker, so I
12 don't know whether you want to take that up
13 today or have another date when we can deal with
14 that.

15 JUDGE MAAS: Well, I think we
16 should have another date. I guess the first
17 question is when the Trustee will respond.

18 MR. JACOBS: Actually, Your Honor,
19 we did respond by email to Ms. Chaitman's
20 inquiry and we also made a document production
21 on Friday, on which we copied Your Honor of all
22 of the remaining trading records we were able to
23 identify from the microfilm restorations that I
24 had referenced in my December letter.

25 So, we have complied with your

1 ruling and there's no further issue pending
2 before Your Honor.

3 JUDGE MAAS: Well, I guess Ms.
4 Chaitman believes there is, correct, Ms.
5 Chaitman?

6 MS. CHAITMAN: Sure. Greg, what
7 was the date of the email that you sent to the
8 judge?

9 MR. DEXTER: This is Greg Dexter.
10 I think that Ted responded to one issue, which
11 is the trading records. However, I had sent an
12 email early this month about the Trustee's
13 responses to interrogatories and document
14 requests, and we don't have a response to that.

15 MR. JACOBS: Hi Greg. I'm sorry,
16 I misunderstood what Helen was raising. I think
17 we addressed the first issue. The second issue,
18 you're correct.

19 I believe you raised the challenge
20 to our amended responses to certain discovery
21 requests in the Wilenitz matter as required by
22 Judge Maas' order and we had served an omnibus
23 amended response within I believe approximately
24 a week of Judge Maas' order, and we have not yet
25 responded by email to your email, but our

1 position, I can tell you, is that we have
2 complied fully with Judge Maas' order. That's
3 reflected on the face of our responses.

4 So, Your Honor, we would request
5 that you review our written responses because I
6 believe that the issue can be resolved without a
7 hearing, and if Your Honor believes there is any
8 deficiency in our amended discovery request
9 that's inconsistent with anything you ordered,
10 we would be happy to appear for a telephonic or
11 an in-person conference at your request.

12 JUDGE MAAS: I have the one email,
13 I have the amended responses. Let me review
14 that, as well as your email that's yet to come.
15 When is that other email anticipated?

16 MR. JACOBS: From the Trustee,
17 Your Honor?

18 JUDGE MAAS: Yes.

19 MR. JACOBS: We haven't sent an
20 email, but I could send one just stating what I
21 just did.

22 JUDGE MAAS: Why don't you do
23 that, just to complete the record.

24 MR. JACOBS: Okay.

25 JUDGE MAAS: And then I'll review

1 it and determine whether or not we ought to have
2 a further conference call.

3 MS. CHAITMAN: Judge, there's one
4 other issue, if I may.

5 JUDGE MAAS: Sure.

6 MS. CHAITMAN: In reviewing some
7 old transcripts I saw that Judge Bernstein had
8 ordered the Trustee in May of 2016 to produce
9 all trading records, and that yet of course has
10 not been done. We've now gotten two productions
11 of trading records, but I would like to ask Your
12 Honor to enter an order requiring the Trustee to
13 produce every single trading record of which
14 he's aware.

15 It's hard to parse through the
16 language of the communications from Baker as to
17 whether they have, in fact, produced all of the
18 microfiche records. Judge Bernstein had ordered
19 the production of all these records, they should
20 have been produced a long time ago and there's
21 been a lot of talk about how difficult it is to
22 do this. But it's not clear to me that in fact
23 all trading records within the Trustee's
24 possession or control have been produced, and I
25 would like that to be absolutely clear without

1 any modification.

2 MR. JACOBS: Your Honor, we've
3 been around in this train a few times now.
4 There's been very detailed correspondence
5 asserting our position. We discussed this issue
6 at length in our arbitration in Wilenitz. There
7 is absolutely no order from Judge Bernstein that
8 compels us or requires us to do anything, but in
9 fact Your Honor did include in one of your
10 orders, after our December in-person
11 arbitration, a statement that the Trustee should
12 produce all trading records that the Trustee has
13 identified, and we have complied with that
14 order.

15 We've made two productions, we've
16 been extremely transparent in terms of our
17 search for records pre-dating 2002. That was
18 described in a multi-page letter that I served
19 on Ms. Chaitman and also copied you back in
20 December. We've since completed our restoration
21 of the microfilm, and we have produced an
22 additional approximately 300 reports that we
23 could identify from that microfilm.

24 And as Your Honor will recall, we
25 are dealing with a data set of, you know,

1 millions and millions and millions and millions
2 of records, and from a proportionality
3 perspective and a Rule 26 analysis, there is no
4 possible conceivable way we are going to forever
5 expend millions of dollars to continue searching
6 for records that at this point there's very
7 little likelihood exist.

8 So, any further order on that
9 issue I assert would be grossly inappropriate.
10 We have complied with it in a very full and
11 transparent way. I'm sorry that Ms. Chaitman
12 hasn't been able to identify any evidence that
13 fits her speculative theories about what may or
14 may not have occurred at BLMIS during a certain
15 time period, but we have made available millions
16 and millions and millions of records that show
17 that BLMIS was engaged in a fraud at all
18 relevant times. And we are happy to continue
19 producing records to Ms. Chaitman, but there's,
20 you know, at some point she's going to have to
21 deal with the actual evidence that is before her
22 instead of pursuing discovery based on -- that
23 has no evidentiary basis as to relevance.

24 JUDGE MAAS: It has an evidentiary
25 basis, I suppose, to the extent that Mr. Madoff

1 testified at the deposition that I was furnished
2 the transcript of that there was trading at an
3 earlier time period that was legitimate and done
4 for the benefit of customers. So I understand
5 her request.

6 I know there was discussion about
7 you restoring microfiche and trying to determine
8 what's on it, and I gather the representation is
9 that that project, which had an uncertain end
10 date, has now been completed. I don't think I
11 can really require, and I think I said this at
12 an earlier conference, I'm not sure which one,
13 the Trustee to start with the first box in the
14 warehouse and go through every single box trying
15 to find trading records, rather than making a
16 good faith search, which Mr. Jacobs is
17 indicating the Trustee did.

18 So, if there's something specific
19 in terms of an area where you feel the Trustee
20 has fallen down with respect to that, Ms.
21 Chaitman, I'd certainly entertain the
22 application. But beyond that, I'm not sure what
23 there is that would be appropriate for me to do
24 at this juncture.

25 MS. CHAITMAN: Well, to take one

1 glaring example, I had asked the Trustee to
2 produce all trading records relating to treasury
3 securities. And Mr. Jacobs' position is that
4 he's not producing them unless I convince him
5 that they're relevant. And I think that's
6 rather bizarre in view of the fact that the
7 investment advisory customers' accounts were all
8 put into Treasury notes in December of every
9 year from 1992 on. And we're entitled to try to
10 match up Madoff's purchases of Treasury
11 securities to the statements of our clients.
12 This is an essential element of our proof.

13 JUDGE MAAS: That sounds like a --
14 first of all, it sounds like a more specific
15 request, rather than all Treasury securities.
16 Apparently what you're interested in is Treasury
17 securities in December of each year.

18 MS. CHAITMAN: Well, no, it's more
19 than that because the Treasury securities show
20 up on the statements throughout the year. But I
21 was just giving you an example. They show up on
22 the customer statements throughout the year.

23 Mr. Picard has taken the position
24 from inception of this case that Madoff never
25 purchased any securities. That has turned out

1 to be absolutely untrue, demonstrably untrue,
2 and now we're dealing with the failure of the
3 Trustee to produce the records with respect to
4 the Treasury securities which show up on every
5 customer statement.

6 JUDGE MAAS: I had understood the
7 Trustee, although certainly the Trustee can
8 speak, at least counsel can speak for
9 themselves, I had understood them not to say
10 that there were no securities purchased over
11 time, but that there were no securities that
12 were purchased in the earlier time period that
13 were for the benefit of investment advisory
14 customers.

15 MS. CHAITMAN: And that is now
16 demonstrably shown as false.

17 MR. JACOBS: Helen, can you please
18 give me -- can you identify for me one specific
19 evidence, piece of evidence that demonstrates,
20 that backs up your statement that that's
21 demonstrably false? Because we're not aware of
22 any that you have ever demonstrated that showed
23 that that's a false statement. Out of all of
24 the millions of documents we have produced to
25 you, on all of these issues for years. Can you

1 tell me, give me one instance where you can
2 demonstrate that a security or a Treasury was
3 traded for an IA customer?

4 MS. CHAITMAN: Yes, yes, I can. I
5 can. Because in 2012 I submitted -- Baker
6 produced to me in connection with one of my
7 customer accounts a confirmation of a Treasury,
8 the purchase of a Treasury security, and then
9 Baker submitted opposition saying that that was
10 a fabricated document, even though the Trustee
11 had never previously alleged that Madoff
12 fabricated internal trading records. The
13 Trustee claimed that that was a fabricated
14 document and that that was not actually a
15 trading ticket.

16 And while it's not yet the time
17 for me to produce an expert report, I've
18 consulted with an expert on that specific
19 trading ticket and he said to me that that was
20 absolutely the confirmation of a purchase of a
21 Treasury security, which was done on the
22 Bloomberg Terminal and there was nothing phoney
23 about it.

24 So, you know, we have not yet had
25 to produce the evidence through an expert

1 report. We've relied on Dubinsky. We've
2 proved, I think, through Madoff's testimony and
3 our experts will also demonstrate, that
4 Dubinsky's report is completely false, in every
5 material fact.

6 MR. JACOBS: Your Honor, the
7 document that Ms. Chaitman is talking about is a
8 falsified document that's been proven to be
9 falsified. She makes these grand sweeping
10 statements about how Dubinsky is going to be
11 proven to be false on all of these grounds, but
12 there's never been any showing or any discussion
13 of any particularized basis on why that's true.
14 And we simply can't answer, you know, these
15 sweeping discovery responses that demand all of
16 these things are going to show that what you're
17 saying is false when we've undertaken years of
18 analysis and made years of putting together an
19 evidentiary basis for our position available.

20 It's really just a fishing
21 expedition. As you know, the Madoff generated
22 false statements of trading activity for each of
23 his IA customers at all given times and our
24 expert report is 100 pages of detailed analysis,
25 you know, considering thousands upon thousands

1 of records that demonstrates conclusively how
2 and why that trading activity as purported was
3 false.

4 JUDGE MAAS: Madoff testified
5 contrary. Whether it's borne out by the records
6 or not, I don't know.

7 MR. JACOBS: Right.

8 JUDGE MAAS: But it does strike me
9 that this is a sufficiently important issue and
10 sufficiently confusing in terms of what may or
11 may not be available, and also as the Trustee's
12 counsel suggested, there were proportionality
13 questions to be considered.

14 So I have no objection to ruling
15 with respect to this, but I think it needs to be
16 done on papers. So, Ms. Chaitman, when can you
17 get me your application?

18 MR. HUNT: I think, Your Honor,
19 what she's asking is for some kind of a global
20 ruling that would apply to all her cases and
21 then she's turning around and telling us that
22 your orders don't apply to all her cases.

23 JUDGE MAAS: If I rule with
24 respect to this in one case that is before me,
25 and say, just for argument sake, produce the

1 entire warehouse containing all of the records
2 removed from the Lipstick Building, but I only
3 rule -- if I only make that ruling in Wilenitz
4 it doesn't much matter because the practical
5 effect would be she'd have it in all the others,
6 although I suppose there would have to be some
7 stipulation.

8 I recognize what's at issue, but I
9 just think there's enough backing and forth
10 here that...

11 MR. JACOBS: The other issue, Your
12 Honor, is that, as Ms. Chaitman knows, we've had
13 a number of discussions with Judge Bernstein
14 about having an omnibus trial on the fraud.
15 Clearly the only defendants who are contesting
16 the fraud, on the strength of our expert report
17 and the documents we've made available, are Ms.
18 Chaitman's and a few other pockets here and
19 there of attorneys who typically follow her
20 lead.

21 So, we are, you know, what's been
22 happening is that the challenge that Ms.
23 Chaitman is making for the earlier -- she's
24 essentially conceded that the fraud -- she's
25 conceded the Ponzi started at least in 1992, so

1 all we're really dealing with are periods prior
2 to that.

3 She deposed Mr. Madoff twice now,
4 once in the PW proceeding and once in the
5 avoidance action. He's now scheduled for a
6 second day and there may be additional days of
7 his deposition, and the Court has allowed that
8 and the Court has also entertained an
9 application for additional discovery following
10 up on that. And then that will potentially lead
11 to, you know, us negotiating and discussing with
12 Ms. Chaitman a procedure about how to, in an
13 orderly and efficient fashion, allowing
14 defendants who, you know, who should be
15 permitted to join, have some type of trial
16 omnibus proceeding where the judge can rule on
17 the challenge with finality with respect to all
18 of the defendants who opt in.

19 So, in connection with that, you
20 know, we are participating in the deposition of
21 Mr. Madoff. We will be doing our own cross of
22 Mr. Madoff at some point when time permits, and
23 we also anticipate that much like we did in the
24 PW proceeding, we're going to have some type of
25 process where the parties exchange discovery,

1 specifically on this issue, and in connection
2 with expert and rebuttal expert reports, and
3 then there will be, I assume, motions in limine
4 and then there will be a trial.

5 So right now our position is that
6 there's, other than the very self-serving
7 testimony, which has so far been wildly
8 inconsistent, of the master mind of this Ponzi
9 scheme, who's incarcerated, has admitted to the
10 fraud and has, in our view, very little, if any,
11 credibility, other than that, there's absolutely
12 no evidentiary basis to support any of the
13 allegations that Ms. Chaitman has made. But as
14 this deposition and this testimony unfolds,
15 we're reacting to it.

16 So, every time Mr. Madoff comes
17 out with some new theory or speculative
18 allegation that, you know, absolves himself of
19 guilt and says he didn't do it and he was
20 actually trading securities and making lots of
21 money for lots of people at variance points of
22 time and every time testimony to that effect
23 comes out we go and reassess everything we have
24 available in our possession and we look. And we
25 look to see is there anything to support this,

1 is there anything to refute this.

2 We anticipate that if Ms. Chaitman
3 continues to pursue this challenge, we're
4 probably going to be exchanging additional
5 expert reports. There will be discovery, I'm
6 sure, in connection with all of that.

7 So the reason why I'm explaining
8 all of this is because I want Your Honor to be
9 aware that we believe that this needs to proceed
10 in a controlled and orderly fashion, and I don't
11 think it's appropriate for Ms. Chaitman to write
12 a letter to Your Honor that contains speculative
13 allegation about Treasury notes that then
14 results in, on an incomplete record, some type
15 of discovery order that compels us to have to
16 provide additional materials that we don't even
17 know or understand why they're relevant or how
18 they fit into any theory that she's attempting
19 to advance.

20 So what I have said to Your Honor
21 and what I have said to Ms. Chaitman many, many,
22 many times, and I'll repeat it again, is that we
23 are not in the business of getting any of these
24 facts wrong. We want to make sure that every
25 allegation we make is absolutely supported by

1 the facts and the books and records of the
2 debtor. If we find anything that is
3 contradictory or that refutes any of that or
4 supports any of that that we haven't yet
5 produced or made available with respect to
6 trading records, we will absolutely produce it
7 and make it available. I can represent that
8 with 100 percent certitude that that will
9 happen.

10 There's nothing that we've been
11 able to identify that would show that there were
12 any trades conducted for any particular IA
13 customer at any given time conclusively that we
14 have not produced. We've produced full sets of
15 all customer statements, we've produced full
16 sets of all the trading ledgers. We've produced
17 all the portfolio management reports for various
18 customers through the durations of their
19 account. We've worked with DTC's counsel to try
20 to see if we can obtain documents beyond their
21 seven-year regulatory preservation obligations,
22 which would have been in effect from 2002 until
23 the revelation of the fraud. We have looked at
24 all the sources we have available to us, we have
25 incurred at great cost the restoration of this

1 microfilm because we believe if there were any
2 reports from the 1980s from DTC or its
3 affiliates, that's where they would be. We
4 incurred that cost, we restored it, the project
5 is finished.

6 We've now produced everything that
7 we could find by conducting the search that we
8 outlined in our December letter for those
9 records after determining that at that point in
10 time it looks like an affiliate of DTC, the NFDC
11 was actually issuing those reports. But even
12 today we don't know -- those reports came off
13 microfilm. We don't know their exact origin.
14 We don't know if they were generated by BLMIS,
15 if they had the 400 computer system or if they
16 were provided externally from NFDC, but we've
17 provided them regardless because, to the best of
18 our ability, that's what we've been able to
19 identify as falling into this category of
20 records showing trading from House 5. We don't
21 have any records showing trading in connection
22 with House 17 beyond what we've already produced
23 or made available in the data room, and those as
24 you know, our position is they're fraudulent.

25 So we are continuing this

1 investigation as the deposition of Mr. Madoff
2 unfolds and as he continues to give new and
3 inconsistent testimony, we are continuing to
4 look for documents. But what I'm trying to say
5 is that I think that any specific orders on any
6 points that aren't specific, narrow and
7 particularized with respect to a request from
8 Ms. Chaitman are grossly inappropriate at this
9 juncture.

10 JUDGE MAAS: I guess in part --
11 Ms. Chaitman is certainly capable of speaking
12 for herself, but I would suppose that when
13 Madoff's deposition continues, to the extent
14 there are confirmatory or potentially
15 confirmatory records that would support his
16 position regarding the pre-1992 period, she'd
17 like to have those and show them to him.

18 I don't disagree with what you
19 said regarding the need for particularity. I
20 think mostly what the discussion you just went
21 through emphasizes is the need for there to be
22 papers with respect to the application, so that
23 if a particularized application needs a
24 particularized response from the Trustee, and
25 then I can rule on it with or without a further

1 hearing. Rather than doing it on the basis of
2 emails and responses to the emails or an oral
3 application now.

4 Ms. Chaitman what's your position?

5 MS. CHAITMAN: I have no objection
6 to submitting a formal application to Your Honor
7 but in fact we did, pursuant to the procedure
8 recommended by Judge Bernstein through the
9 Wilenitz motion to compel which was referred to
10 you, we asked for production of all the trading
11 records.

12 So what we're asking for now is
13 not different from what we asked for before.
14 And Baker keeps making the point that I want
15 your rulings to apply to all the cases. Well,
16 this is one where Judge Bernstein specifically
17 ruled that because we had served these discovery
18 demands in all the cases, we would litigate it
19 through the Wilenitz case but it would apply.
20 So there's a specific holding with respect to
21 that.

22 Now, the issue of when the fraud
23 began -- if I can just finish what I'd like to
24 say. The issue of when the fraud began, Madoff
25 said that it began in 1992 with a split-strike

1 conversion strategy.

2 Frank DiPascali, who was the
3 government's chief witness at the trial of other
4 Madoff employees, testified in his plea that the
5 fraud began with the split-strike and he first
6 said it began in 1992 and then he said it was
7 either the late '80s or early '90s.

8 MR. JACOBS: Your Honor, we sent
9 you that application. That is a grossly unfair
10 characterization --

11 JUDGE MAAS: I was about to say,
12 we're going over old ground and I think we
13 should focus on when you'll make the
14 application, Ms. Chaitman.

15 MS. CHAITMAN: Well, we just went
16 through 15 minutes from Mr. Jacobs and he made
17 some grossly inadequate statements, Your Honor.
18 And unless you're going to disregard everything
19 he said, I'd like the opportunity to respond to
20 them. It will only take me five minutes.

21 JUDGE MAAS: That's fine. I just
22 want to say that you made representations about
23 Mr. DiPascali's plea some time ago and that led
24 to me reviewing the transcript and the
25 transcript speaks for itself

1 MS. CHAITMAN: One thing I haven't
2 previously informed you of is that the initial
3 expert that the Trustee relied upon was a man
4 named Joseph Loovy, L-o-o-v-y, and I'm sure that
5 Mr. Edwards will be happy to provide you --
6 Mr. Jacobs will be happy to provide you with a
7 copy of that affidavit. And he says that the
8 fraud began in 1992 with Madoff's acquisition of
9 the IBM AS/400 computer. And it's indisputable
10 that that was acquired in 1992. And
11 Mr. Picard's own expert said that that's when
12 the fraud began. So for --

13 MR. JACOBS: That's an outrageous
14 statement, Helen.

15 JUDGE MAAS: Hang on, let Ms.
16 Chaitman finish and then I'll give you an
17 opportunity to respond. Go on, Ms. Chaitman.

18 MS. CHAITMAN: The issue of when
19 the fraud began has been determined by Picard.
20 It began in 1992. He simply is arguing that it
21 began from inception because that allowed him to
22 net out the positive results from the inception
23 of these accounts. And we have very credible
24 testimony from Mr. Madoff. The man has no
25 reason to lie at this point. If criminal

1 prosecutions can depend upon the testimony of
2 people who were involved in crimes and then
3 confessed, why is Mr. DiPascali more credible
4 than Mr. Madoff? Mr. Madoff has nothing to gain
5 at this point. In fact, his testimony flatly
6 disputes so much of what the expert report, on
7 which Mr. Picard relies, the Dubinsky report, it
8 makes Dubinsky into some kind of charlatan.

9 So, all I'm saying is I'm entitled
10 to all of the trading records. And that
11 includes the Treasury bonds. How does it come
12 about that Mr. Jacobs can say that they've
13 produced all the trading records but they
14 haven't produced the trading records with
15 respect to Treasury securities? Treasury
16 security is a security. The records with
17 respect to those should have been produced
18 already. I shouldn't have to fight to get a
19 portion of the trading records that Your Honor
20 ordered them to produce.

21 JUDGE MAAS: Mr. Jacobs or
22 Mr. Hunt?

23 MR. JACOBS: I'm not going to
24 respond to those comments. They speak for
25 themselves and, Your Honor, our expert testimony

1 speaks for itself. DiPascali speaks for
2 himself. Madoff speaks for himself. And when
3 you have an -- I believe you've had an
4 opportunity to review the testimony so far,
5 there is no corroborating evidence that he has
6 identified or that Ms. Chaitman has identified
7 as to any of his assertions concerning the start
8 date of the Ponzi scheme.

9 Our expert does in great detail
10 discuss the purported purchase of Treasuries,
11 the purported purchase of stocks. We've made
12 probably close to six million records available
13 to Ms. Chaitman in connection with these issues.

14 So, my only request to Your Honor
15 is that to the extent, at this juncture, in
16 light of that, Ms. Chaitman believes she's
17 entitled to any additional discovery, it is her
18 burden to demonstrate both the need and the
19 relevance and the proportionality of that
20 discovery before anything else should be
21 ordered. And if she does have a reasonable
22 request for something that is specific that we
23 can look for and identify in a reasonable
24 fashion with a reasonably articulated basis of
25 relevancy, we are happy to talk to her any day

1 of the week to try to locate those records and
2 get them to her. But she can't just simply
3 ignore the six million records we have already
4 made available and the 100-page expert report
5 analysis that discusses all of these very issues
6 that she's raising.

7 Our position, obviously, is that
8 Mr. Madoff saying this didn't happen really
9 doesn't carry a lot of weight when, for 30
10 years, he perpetuated the world's largest Ponzi
11 scheme and defrauded his closest friends and
12 family in addition to thousands of other people
13 all across the world. I mean, it's really just
14 absurd.

15 JUDGE MAAS: One thing Ms.
16 Chaitman mentioned was an earlier report that
17 she views as inconsistent.

18 MR. JACOBS: Ms. Chaitman has a
19 copy of that report. It was submitted in
20 connection with a motion years ago. I don't
21 even recall the specific posture, but there's
22 nothing in that report that's inconsistent with
23 anything that Mr. Dubinsky or any of our other
24 experts have said at any point in time.

25 MR. CREMONA: Yes, Your Honor,

1 this is Nicholas Cremona, I'm also on the line
2 on behalf of the Trustee. If I could just
3 address that a little more specifically.

4 Ms. Chaitman I believe raised a
5 purported Treasury record or a trading record
6 from 2012. I just want to point out that that,
7 as Mr. Jacobs just said, that was the subject of
8 briefing before the District Court, I believe,
9 in the Grieff proceeding, then before Judge
10 Bernstein I believe in the context of an omnibus
11 proceeding.

12 So I just want to make clear this
13 is not a new record or something that hasn't
14 been over and brought to the Court's attention
15 and, in fact, has gotten no traction because it
16 was shown to be a screenshot, as Ms. Chaitman
17 alluded to, from a Bloomberg Terminal that was
18 not a trading record but rather someone
19 retrospectively looking at a screen to see what
20 the pricing of the trade would have been had it
21 actually occurred. All of which we can provide
22 to you, all of which was debunked previously.

23 So I don't think it's as Ms.
24 Chaitman alluded to and, in fact, this is old
25 news and it should be viewed as such.

1 JUDGE MAAS: As I said a couple of
2 times, I'm sort of parachuting in in the middle
3 of this. So both sides have a lot more history,
4 obviously, all of which hammers home to me to
5 have this done on paper. So let me go back, Ms.
6 Chaitman, to the question I asked:

7 When do you wish to make your
8 submission?

9 MS. CHAITMAN: Okay, can you give
10 me ten days, Judge?

11 JUDGE MAAS: Sure. Let me pull up
12 a calendar. The 20th is President's Day. Why
13 don't we say the 21st.

14 MS. CHAITMAN: That's fine, thank
15 you so much.

16 JUDGE MAAS: And for the Trustee's
17 response?

18 MR. JACOBS: I'm looking at my
19 calendar, Your Honor. If that is served on the
20 21st, one week would be the 28th. I think we
21 would ask for, at a minimum, March 6th.

22 JUDGE MAAS: I don't have a
23 problem with that. When is the next session of
24 Madoff scheduled for, just out of curiosity?

25 MS. CHAITMAN: March 14.

1 JUDGE MAAS: Okay. I may be away
2 in late February and early March, but that's
3 still up in the air. Once I see the papers, if
4 I think there's a need for a hearing or oral
5 argument, I'll let you folks know. And I'd ask
6 that when the Trustee has this transcribed, that
7 you furnish me and obviously Ms. Chaitman with a
8 copy.

9 MR. JACOBS: We will do, Your
10 Honor.

11 JUDGE MAAS: Anything else we
12 should take up today?

13 MS. CHAITMAN: You know, Judge,
14 maybe we could take up something which shouldn't
15 really be an issue, but it has been. The
16 Trustee is deposing one or two or three people
17 in each of these cases. And I have asked the
18 Trustee to provide me with a transcript so that
19 the witness can review the transcript for
20 accuracy, and the Trustee has refused to provide
21 me with a copy of the transcript. I was asking
22 to order the Trustee to provide it to me.

23 MR. JACOBS: Your Honor, may I
24 respond?

25 JUDGE MAAS: Yes.

1 MR. JACOBS: Your Honor, we have
2 been more than accommodating in terms of
3 incurring the heavy burden of the cost of
4 discovery in all of these actions. So, for
5 example, Ms. Chaitman doesn't make document
6 productions to us, she makes documents available
7 usually through her paralegal or one of her
8 associates and sometimes even at the home of an
9 accountant or others, and we send people to
10 those locations to pick up those documents. We
11 pay for the cost of that, we pay for the cost of
12 copying, we then scan those documents, we OCR
13 them, we Bates stamp them and then we reproduce
14 the Bates stamped and OCR version back to her so
15 she can have an electronic version for her
16 system, and we don't complain about any of those
17 things, even though we have about 100 cases with
18 Ms. Chaitman where collectively she's
19 representing claims that are over in excess of
20 \$100 million.

21 So, in terms of the deposition
22 transcripts, you know, we did enter into a
23 stipulation with Judge Bernstein where we agreed
24 to pick up the costs of arbitration up to the
25 first \$50,000. As an additional concession to

1 Ms. Chaitman we agreed, even though we weren't
2 required to, to amalgamate all of her cases in
3 recognition of the fact that if we put together
4 the cost of each and every one of her cases at
5 50 grand apiece we were unlikely, hopefully, to
6 ever need to go beyond that amalgamated amount
7 in terms of paying for discovery dispute, so
8 therefore we would not require her clients to
9 pay for any.

10 But in terms of litigation in the
11 avoidance proceedings, it is not customary for a
12 party to pay for the other party's copy of a
13 deposition transcript. We have to pay a court
14 reporter to be present any time we take a
15 deposition and we incur that cost and if Ms.
16 Chaitman takes depositions she does the same.
17 And the court reporter generates a transcript
18 and, you know, they make money by getting paid
19 for those transcripts. So, if we did order an
20 additional copy of the transcript for Ms.
21 Chaitman, we would be incurring yet again
22 another cost which traditionally there is no
23 legal basis for us to have to incur.

24 So, we have told her that we're
25 not going to pay for that, nor are we going to

1 provide her with a copy of the version that
2 we've paid for because I don't think that's fair
3 to the court reporter. The court reporters
4 deserve to get paid for their work.

5 So that's our position. I know
6 Dean Hunt has looked into this a little further
7 and if he has anything to add, I'll turn this
8 over to him.

9 ARBITRATOR MAAS: This comes up
10 always in civil litigation. We have dealt with
11 this any number of times when I was practicing
12 rather than sitting on the bench. And in
13 different cases people reach or don't reach
14 different accommodations. But you're obliged to
15 send, I guess it's the original of the
16 transcript to the witness for the witness'
17 review, correct?

18 MR. HUNT: No, that's actually not
19 correct, Your Honor. Rule 30 provides that if
20 the deponent requests a review of the
21 transcript, they be afforded the opportunity to
22 do that. The rule does not say that a party has
23 to send a copy of the transcript to another
24 party.

25 And the case law is very clear

1 that if a party chooses not to order a
2 transcript, but wants to review and sign the
3 transcript, it just has to be made reasonably
4 available to them near the deponent's address.
5 And that is the procedure that the court
6 reporter follows in this case, and if Ms.
7 Chaitman's clients request that they review and
8 sign before the deposition is completed, which
9 is the rule, they are allowed to go and take a
10 look at that. But Bendish Court Reporting and
11 any other court reporter is not required to give
12 them a copy of the transcript and not get paid.
13 That's the rule. It's Rule 30 --

14 JUDGE MAAS: Looking at Rule 30E,
15 and it does say on request by a deponent or a
16 party, the deponent has to be given 30 days
17 after being notified that it's made available.
18 It doesn't talk about what making it available
19 means.

20 MR. HUNT: I can provide you the
21 case law, but typically --

22 JUDGE MAAS: Notwithstanding what
23 frequently becomes customary, you're quite
24 correct, that the rule doesn't say that the
25 original has to be furnished. And it also says

1 that when paid reasonable charges, and I'm in 3,
2 the officer must furnish a copy of the
3 transcript to any party or the deponent.

4 MR. DEAN: -- exactly where you're
5 heading I think, which is Ms. Chaitman needs to
6 call the court reporter and work this out with
7 her.

8 JUDGE MAAS: Unless the Trustee is
9 willing to accommodate you in another way, and
10 apparently the Trustee isn't, I don't think
11 under the rules I can require that the
12 transcript be made available to you free of
13 charge.

14 MS. CHAITMAN: Okay. All right, I
15 accept Your Honor's ruling.

16 JUDGE MAAS: Anything else?
17 Anything from the Trustee?

18 MR. JACOBS: Not at this time,
19 Your Honor.

20 JUDGE MAAS: Thank you all and
21 once I get those papers, I'll be in touch.

22 MR. JACOBS: Thank you, Your
23 Honor.

24 MS. CHAITMAN: Thank you.

25 JUDGE MAAS: Good day everyone.

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1 Take care.

2 (End of Conference 12:02 p.m.)

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1 C E R T I F I C A T E

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3 I, NANCY C. BENDISH, a Certified
4 Court Reporter and Notary Public of the States
5 of New York and New Jersey, do hereby certify
6 that the foregoing is a true and accurate
7 transcript of the telephonic conference as taken
8 stenographically by and before me at the time,
9 place, and on the date hereinbefore set forth.

10 I DO FURTHER CERTIFY that I am
11 neither a relative nor employee nor attorney nor
12 counsel of any party in this action and that I
13 am neither a relative nor employee of such
14 attorney or counsel, and that I am not
15 financially interested in the event nor outcome
16 of this action.

17

18

19 Nancy C. Bendish, CCR, RMR, CRR
20 Realtime Systems Administrator
Certificate No. XI00836

21

22

23 Dated: February 13, 2017

24

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